

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re: ) Case No. 17-17361  
 )  
RICHARD M. OSBORNE, SR., ) Chapter 7  
 )  
Debtor. ) Judge Arthur I. Harris

**TRUSTEE'S OBJECTION TO DEBTOR'S CLAIMED EXEMPTIONS**

Kari B. Coniglio, Chapter 7 Trustee for the Chapter 7 bankruptcy estate of Richard M. Osborne, Sr. (the “Debtor”), hereby objects to the following claimed exemptions:

- (1) Debtor’s claimed exemption under Section 2329.66(A)(1) of the Ohio Revised Code in real property located at 7020 Williams Road, Concord, Ohio;<sup>1</sup>
- (2) Debtor’s claimed exemptions under Sections 2329.66(A)(13) and (17) of the Ohio Revised Code and Section 1673 of Title 15 of the United States Code in the “Monthly Fee a co executor of Jerome T Osborne Estate”; and
- (3) Debtor’s claimed exemptions under Sections 2329.66(A)(13) and (17) of the Ohio Revised Code and Section 1673 of Title 15 of the United States Code in the “Monthly Fee for Real Estate management for Jerome T. Osbonre [sic] Estate (paid to 5850 Woodside LLC)”.

“ ‘Exemptions are determined on the date a petition is filed.’ ” *In re Aubiel*, 534 B.R. 300, 303-04 (B.A.P. 6<sup>th</sup> Cir. 2015) (*quoting In re Wengerd*, 453 B.R. 243, 252 (B.A.P. 6<sup>th</sup> Cir. 2011)).

In this case, the Debtor has testified on multiple occasions that between the December 17, 2017 petition date and (at the earliest) August 16, 2019, the Debtor resided in his property on Markell Road, and not at the property located at 7020 Williams Road. Accordingly, the Debtor is not entitled to claim a homestead exemption in the 7020 Williams Road property.

Debtor’s exemptions in both his monthly fees for acting as a co-executor of the Jerome T. Osborne Estate and the monthly fees paid to 5850 Woodside LLC are each inapplicable because

---

<sup>1</sup> This Court previously sustained First National Bank of Pennsylvania’s Objection to Debtor’s Claim of Homestead Exemption [Doc. 219]; however, given the Debtor’s amendments to Schedule C after this Court’s entry, the Trustee files this Objection in an abundance of caution.

the payments to the debtor are not in exchange for work or labor performed by the Debtor. *See In re Larkins*, No. 11-18295, 2012 Bankr. LEXIS 1762, at \*5 (Bankr. N.D. Ohio Apr. 19, 2012) (defining “personal earnings” as “money or any other consideration or thing of value, that is paid or due to a person in exchange for work, labor, or personal services provided by the person to an employer” (citations omitted)); *In re Lehman*, No. 18-61415-rk, 2018 Bankr. LEXIS 3389, at \*3–4 (Bankr. N.D. Ohio Nov. 2, 2018) (similarly defining “personal earnings,” and holding real estate commissions do not constitute personal earnings where party making payments was not required to withhold taxes). Cf. *WesBanco Bank, Inc. v. Ettayem*, Nos. 14AP-452, 14AP-455, 2015-Ohio-123, 2015 Ohio App. LEXIS 1207, at \*8 (Ohio Ct. App. Mar. 31, 2015) (finding that lease payments owed to judgment debtor were not personal earnings and thus could be reached by judgment creditor through creditor’s bill).

Further, to the extent 5850 Woodside LLC, an entity in which the Debtor is the sole member, performs services for the Jerome T. Osborne Estate, subsequent distributions to the Debtor are distributions on account of his membership interests and not on account of labor or personal services actually performed by the Debtor.

**WHEREFORE**, Trustee hereby requests that this Court sustain this Objection and deny the Debtor’s application of any claimed exemption in the aforementioned assets of his estate, and order such other relief in favor of the Trustee as this Court deems just.

Dated: February 5, 2020

Respectfully submitted,

/s/ Kari B. Coniglio  
Kari B. Coniglio #0081463  
Chapter 7 Trustee  
200 Public Square, Suite 1400  
Cleveland, OH 44114  
Tel (216) 479-6167  
Fax (216) 937-3766  
kbconiglio@vorys.com

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Trustee's Objection to Debtor's Claimed Exemptions* was served via the Court's Electronic Case Filing System on February 5, 2020 on the following who are listed on the Court's Electronic Mail Notice List:

- Patrick R. Akers prakers@vorys.com
- Gregory P. Amend gamend@bdblaw.com, grichards@bdblaw.com
- Alison L. Archer alison.archer@ohioattorneygeneral.gov, Trish.Lazich@ohioattorneygeneral.gov;angelique.dennis-noland@ohioattorneygeneral.gov
- Richard M. Bain rbain@meyersroman.com, mnnowak@meyersroman.com;jray@meyersroman.com
- Adam S. Baker abakerlaw@sbcglobal.net, adam@bakerlaw.us;abakerlaw@gmail.com
- Austin B. Barnes abarnes@sandhu-law.com, bk1notice@sandhu-law.com
- Robert D. Barr rbarr@koehler.law, rbarr@koehler.law
- David T. Brady DBrady@Sandhu-Law.com, bk1notice@sandhu-law.com
- Carrie M. Brosius cmbrosius@vorys.com, mdwalkuski@vorys.com
- Kari B. Coniglio kbconiglio@vorys.com, mdwalkuski@vorys.com;kbc@trustesolutions.net;jncash2@vorys.com
- LeAnn E. Covey bknotice@clunkhoose.com
- Richard W. DiBella rdibella@dgmblaw.com
- Melody A. Dugic mgazda@hendersoncovington.com
- Bryan J. Farkas bjfarkas@vorys.com, bjfarkas@vorys.com;caujczo@vorys.com;mdwalkuski@vorys.com
- Scott D. Fink ecfndoh@weltman.com
- Stephen R. Franks amps@manleydeas.com
- Stephen John Futterer sjfutterer@sbcglobal.net, r43087@notify.bestcase.com
- Michael R. Hamed mhamed@kushnerhamed.com, kgross@kushnerhamed.com
- Heather E. Heberlein hheberlein@bdblaw.com, grichards@bdblaw.com
- Dennis J. Kaselak dkaselak@peteribold.com, Cynthia@peteribold.com
- Christopher J. Klym bk@hhkwlaw.com
- Jerry R. Krzys jkrzys@hendersoncovington.com, jerrykrzys@gmail.com
- Matthew H. Matheney mmatheney@bdblaw.com, bhajduk@bdblaw.com
- Shannon M. McCormick bankruptcy@kamancus.com
- Kelly Neal kelly.neal@bipc.com, donna.curcio@bipc.com
- David M. Neumann dneumann@meyersroman.com, jray@meyersroman.com;mnnowak@meyersroman.com
- Timothy P. Palmer timothy.palmer@bipc.com, donna.curcio@bipc.com
- Drew T. Parobek dtparobek@vorys.com, mdwalkuski@vorys.com
- Tricia L. Pycraft tpycraft@ccj.com, bowman@ccj.com
- Kirk W. Roessler kroessler@walterhav.com, kballa@walterhav.com;slasalvia@walterhav.com;deppler@walterhav.com

- John J. Rutter jrutter@ralaw.com
- Frederic P. Schwieg fschwieg@schwieglaw.com
- Michael J. Sikora msikora@sikoralaw.com, aarasmith@sikoralaw.com
- Nathaniel R. Sinn nsinn@bdblaw.com, grichards@bdblaw.com
- Robin L. Stanley rstanley@peteribold.com, Sonya@peteribold.com;Cynthia@peteribold.com
- Rachel L. Steinlage rsteinlage@meyersroman.com, jray@meyersroman.com;mnnowak@meyersroman.com;rbain@meyersroman.com
- Richard J. Thomas rthomas@hendersoncovington.com, mgazda@hendersoncovington.com
- Andrew M. Tomko atomko@sandhu-law.com, bk1notice@sandhu-law.com
- Jeffrey C. Toole jtoole@bernsteinlaw.com, lyoung@bernsteinlaw.com
- United States Trustee (Registered address)@usdoj.gov
- Michael S. Tucker mtucker@ulmer.com
- Phyllis A. Ulrich bankruptcy@carlisle-law.com, bankruptcy@carlisle-law.com
- Leslie E. Wargo Leslie@Wargo-Law.com
- Elia O. Woyt eowoyt@vorys.com, eowoyt@vorys.com;mdwalkuski@vorys.com
- Maria D. Giannirakis ust06 maria.d.giannirakis@usdoj.gov
- Scott R. Belhorn ust35 Scott.R.Belhorn@usdoj.gov

/s/ Kari B. Coniglio

Kari B. Coniglio